



Department of Development Services
205 Lawrence Street
Marietta, Georgia 30060
Brian Binzer, Director

STAFF REVIEW AND RECOMMENDATION

Variance Case #: V2011-28

Legistar #: 20110799

Board of Zoning Appeals Hearing: Monday, September 26, 2011 – 6:00 p.m.

Property Owner: Mr. Bob Louder
Daystar Foundation, Ltd.
302 Old Clay Street
Marietta, GA 30060

Applicant: Dr. Melville William “Bill” Kinney, III
773 North Saint Mary’s Lane
Marietta, GA 30064

Agent: Garvis L. Sams, Jr.
SAMS, LARKIN & HUFF, LLP
376 Powder Springs Street, Suite 100
Marietta, GA 30064

Address: 302 Old Clay Street

Land Lot: 02890 District: 17 Parcel: 0210

Council Ward: 3 Existing Zoning: OI (Office Institutional)

Special Exception / Special Use / Variance(s) Requested:

1. Variance to reduce the setback for an animal clinic adjacent to residential from 100’ to 41.13’.[708.23(B.1.a)]

Statement of Fact

As per section 720.03 of the Comprehensive Development Code of Marietta, the Board of Zoning Appeals may alter or modify the application of any such provision in the Development Code because of unnecessary hardship if doing so shall be in accordance with the general purpose and intent of these regulations, or amendments thereto, and only in the event the board determines that by such alteration or modification unnecessary hardship may be avoided and the public health, safety, morals and general welfare is properly secured and protected. In granting any variance the board of zoning appeals shall designate such conditions in connection therewith as will, in its opinion, secure substantially the objectives of these regulations and may designate conditions to be performed or met by the user or property owner, out of regard for the public health, safety, comfort, convenience, and general welfare of the community, including safeguards for, with respect to light, air, areas of occupancy, density of population and conformity to any master plan guiding the future development of the city. The development costs of the applicant as they pertain to the strict compliance with a regulation may not be the primary reason for granting a variance.

Criteria:

1. Exceptional or extraordinary circumstances or conditions *are/are not* applicable to the development of the site that do not apply generally to sites in the same zoning district.
2. Granting the application *is/is not* necessary for the preservation and enjoyment of a substantial property right of the applicant, and to prevent unreasonable property loss or unnecessary hardship.
3. Granting the application *will/will not* be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety, or general welfare.

PICTURES



302 Old Clay Street



302 Old Clay Street



Property to the east (OI)



View looking north

Recommended Action:

Conditional Approval. Garvis Sams, attorney for the applicant, is requesting a variance that would allow a veterinary clinic operate within 100' from a property zoned for residential purposes. The subject property is zoned OI (Office Institutional) and is located at the southeastern corner of the intersection of Old Clay Street and Garrison Drive. The property immediately to the east is also zoned OI and contains a vacant, single family home. To the south is a single family home zoned RM-8 (Multi Family Residential – 8 units/acre). Across Garrison Street to the west is a church zoned OI. Two vacant homes, zoned CRC (Community Retail Commercial), lie directly across Old Clay Street to the north.

The Zoning Ordinance defines animal hospital as “*a place where animals or pets are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the hospital use.*” Animal hospitals and veterinary clinics are a permitted use within the OI zoning district with the following restrictions:

- a. All structures shall be located and activities conducted at least 100 feet from any property zoned for residential purposes.
- b. All animals shall be housed within an enclosed building and adequate sound and odor control shall be maintained.

According to the survey submitted with the application, the existing structure on the subject property is located 46.76' from the southern property line, falling short of the 100' required to operate an animal clinic.

The negative impacts associated with an animal care facilities typically stem from outdoor pens and exercise areas associated with kennels, which are prohibited in OI. The negative effects of animal clinics that focus on the medical needs of animals should not be any worse than those associated with a day care center, bank, or (human) medical office building, all of which are allowed as by-right uses in OI. As a result, the proposed use should not be detrimental to the adjacent residential property, overall neighborhood or general vicinity.

In addition, the applicant has provided a list of agreeable stipulations (see attached letter dated September 12, 2011 from Garvis L. Sams, Jr. to Shelby Little) meant to address any impacts associated with this use. Some of the issues addressed by the stipulations are:

- The use proposed for the subject property shall consist of medical and/or surgical treatment of a specialized nature based upon referrals. There will be no boarding of animals with stays at the clinic being limited to short-term care incidental to the clinic use.
- There shall be no outside runs or external kennels with all of the small domestic animals being treated within the interior of the facility.
- The house of operation will be from 8:00 a.m. to 6:00 p.m., Monday through Friday, and from 8:00 a.m. until 4:00 p.m. on Saturday. There shall be no operation of the facility on Sundays.

Therefore, Staff recommends approval of this application subject to the stipulations identified in the letter dated September 12, 2011 from Garvis L. Sams, Jr. to Shelby Little.